

THE EFFECTIVE DATE OF THIS ORDINANCE IS NOVEMBER 16, 2006

ORDINANCE NO. 06-37-433

OPINION, FINDINGS AND ORDINANCE  
OF  
THE BOARD OF COUNTY COMMISSIONERS  
OF  
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF MEMORY LANE PROPERTIES, INC.  
REZONING CASE NO. R-06-03

OPINIONS/FINDINGS

Memory Lane Properties, Inc. filed this application to rezone three parcels of land totaling 2.90 acres, more or less, from the RC (Resource Conservation) Zone to the GC (General Commercial) Zone. The property is located on the southwestern corner of Hessong Bridge Road and Powell Road in the Frederick Planning Region, all as more fully described in the record. This rezoning request is based on a mistake in the existing zoning classification. The applicant asserts that a mistake was made when the RC zoning classification was placed on this property during the 2002 Frederick Region Plan update. The Planning Division staff recommended approval of the request for a General Commercial rezoning based upon a finding of mistake in that a mapping error occurred during the 2002 Frederick Region Plan update.

The Frederick County Planning Commission recommended approval of the rezoning request.

This property is currently zoned Resource Conservation (RC). This zoning classification was placed on the property during the 2002 Frederick Region comprehensive zoning process. The initial 1959 zoning designation of this property was B-3 General Business District. In 1977, as part of the zoning ordinance update, the B-3 zoning designation changed to General Commercial (GC). It remained GC until the 2002 Frederick Region Plan update when it was rezoned to Resource Conservation.

Based on all of the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Maryland Code Annotated Article 66B, Section 4.05(a):

1. POPULATION CHANGE

According to census block data for the year 2000, the population of the immediate area is approximately 300 people. General Commercial zoning would not result in any additional permanent population with the possible exception of the minor addition of an owner or caretaker housing should that permitted use be constructed on the property. The proposed zoning would have no impact on the population of the surrounding area.

2. AVAILABILITY OF PUBLIC FACILITIES

A. SCHOOLS

This request for General Commercial zoning would not have a direct impact on school enrollments.

B. FIRE AND RESCUE SERVICES

This site is served by Lewistown District Volunteer Fire Department located 1.4 miles from the site.

C. POLICE SERVICE

The site is served by the Frederick County Sheriff's Office and the Maryland State Police.

D. LIBRARIES

The closest existing library is the Walkersville Regional Library located approximately 6 miles from the site. Thurmont Regional Library is approximately 7 miles from the site. A new facility for the Thurmont Regional Library is scheduled for construction in 2006. The Walkersville Regional Library is scheduled for design in 2009 and construction in 2010.

E. PARKS AND RECREATION FACILITIES

This request for General Commercial zoning would not have any direct impact on park facilities.

F. WATER AND SEWER

The site is currently designated No Planned Service (NPS) for both water and sewer service in the Frederick County Water and Sewerage Plan. The site is currently served by a well and septic system.

The requested zoning would have no significant impact on public facilities.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

A. CURRENT SITE ACCESS CHARACTERISTICS

The site is located at the intersection of Hessong Bridge Road and Powell Road. This property can be accessed from both Powell Road and Hessong Bridge Road via two separate curb cuts from each road. Powell Road has a direct connection to U.S. Rt. 15 by way of an at grade intersection. Hessong Bridge Road connects with U.S. Rt. 15 several miles south of the site. Powell Road is designated a 50 foot local road and Hessong Bridge Road a 60 foot collector road on the 2002 Frederick Region Comprehensive Plan. U.S. Rt. 15 is a

major national highway that runs north/south between central New York and South Carolina. The requested rezoning would have a minimal impact on the present and future transportation patterns. The site specific impacts will be considered in more depth in the course of the future development process for this site.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA

A. EXISTING LAND USES IN THE NEIGHBORHOOD

An existing approximately 100 year old building on the site initially served as a railway depot for the Hagerstown and Frederick Railway and has retained commercial use for the majority of its history. Most recently the site and building were used for business purposes including the staging of construction work. The site is located at the south end of a strip of street frontage housing and commercial institutional buildings along Hessong Bridge Road. To the north of this site land use is predominately residential with several commercial uses and church properties. The Lewistown District Fire Company and Lewistown Elementary School are also to the north along the east side of Hessong Bridge Road. The eastern area around the site includes residential and agricultural land use. Residential subdivisions are located at the corner of Lewistown Road and Hessong Bridge Road and agricultural uses are further to the east beyond the residential. To the south of the site, the land is predominately used for agricultural purposes with a few residential lots. The western area around the site includes another strip of street frontage buildings along Powell Road with residential and some commercial uses. The requested General Commercial Zoning would not greatly impact the site's compatibility with the existing and surrounding uses. The requested General Commercial Zoning is compatible with existing and proposed development for the area.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION

The Frederick County Planning Commission recommended approval of the requested General Commercial Zoning.

6. RELATIONSHIP OF THE PROPOSED AMENDMENT TO THE  
FREDERICK COUNTY COMPREHENSIVE PLAN

The northwest portion of this site is within the Lewistown Rural Community boundary. The site is designated Rural Community (RurC) and Resource Conservation (RC) in the 2002 Frederick Region Plan. The RurC is on the northwestern portion of the site adjacent to Powell Road and RC is on the remainder of the site. The requested General Commercial Zoning is consistent with that portion of the property designated Rural Community in the Comprehensive Plan. The Rural Community Plan designation is intended to support small scale commercial services for the surrounding community. The requested General Commercial Zoning is not consistent with the resource conservation land use plan designation on the remainder of the property.

Based on all of the evidence submitted in this matter, the Board of County Commissioners finds that a mistake has been made in the existing zoning classification of Resource Conservation. An error was made when the Comprehensive Plan Map showed RC zoning for this property.

Under Maryland law, the Board of County Commissioners may grant a requested zoning map amendment based upon a finding that there was a mistake in the existing zoning classification. A mistake may occur when there is an error in the underlying assumptions upon which the legislative body made the comprehensive zoning decision. A mistake may be established by showing that the legislative body failed to take into account then existing facts so that the legislative body's action was premised on a misapprehension.

The following information provides evidence that a mistake occurred during the 2002 Frederick Region Plan Update:

- Draft plans from both the Planning Staff and the Planning Commission recommended that the site retain its General Commercial Zoning.
- The site was not included in staff's list of properties to be considered for downzoning sent to property owners prior to the relevant Board of County Commissioners hearings. This list was to include all properties being considered for downzoning.
- A rezoning application was not filed for the site during the 2002 Frederick Region Plan update.
- The tax map and parcel number of the site is not mentioned in any of the Board of County Commissioners meeting minutes pertaining to the 2002 Frederick Region Plan update process.
- The site is not included in the list of Board of County Commissioners rezoned properties sent to the Maryland Department of Assessments. This list was intended to be complete and include all properties rezoned during the 2002 Frederick Region Plan process.
- The site was not specifically mentioned during the Board of County Commissioners Lewistown workshops.

In adopting the 2002 Comprehensive Zoning Maps, one of the underlying assumptions of the Board of County Commissioners was that only those properties which the Board of County Commissioners had specifically considered and directed staff to change would be changed. For this property, this underlying assumption proved incorrect. The Board took no specific action during the various public meetings leading up to the Comprehensive Zoning Map adoption which would have changed the zoning of this property from the existing General Commercial to Resource Conservation. The Board finds that this constitutes mistake in the existing zoning classification.

Having found mistake, the Board rezones the property to the General Commercial zoning classification. The General Commercial zoning classification designation corrects the mistake made during the Comprehensive Zoning process.

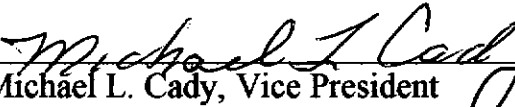
ORDINANCE


BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-06-03 is hereby **GRANTED** for the reclassification of 2.9 acres of land, more or less (as designated in the record), from the Resource Conservation (RC) classification to the General Commercial (GC) classification based on a mistake in the existing zoning classification.

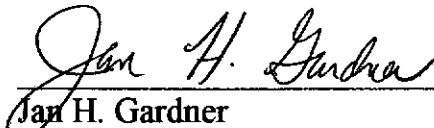
AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change to the zoning map showing this reclassification.

The undersigned hereby certify that this Ordinance was approved and adopted on the 16th day of November, 2006.

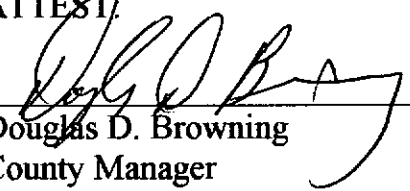
BOARD OF COUNTY COMMISSIONERS  
OF FREDERICK COUNTY, MARYLAND

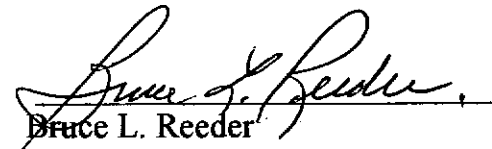
By:   
Michael L. Cady, Vice President

  
John R. Lovell, Jr.

  
Jan H. Gardner

ATTEST.

  
\_\_\_\_\_  
Douglas D. Browning  
County Manager

  
\_\_\_\_\_  
Bruce L. Reeder

  
Commissioner John L. Thompson, Jr. voted against the proposed  
reclassification.